



**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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July 6, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 93-179; Price Cap Regulation of Local Exchange Carriers;
Rate of Return Sharing and Lower Formula Adjustment

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Reply to the Oppositions to its Petition for Reconsideration in the above-captioned proceeding.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Chris Frentrup
Senior Regulatory Analyst
Federal Regulatory

Enclosure
CF

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Price Cap Regulation of)	
Local Exchange Carriers)	CC Docket No. 93-179
)	
Rate-of-Return Sharing)	
and Lower Formula Adjustment)	
)	DOCKET FILE COPY ORIGINAL

REPLY

I. INTRODUCTION

MCI hereby submits its reply to the comments in opposition to its May 24, 1995, petition for reconsideration of the Add-Back Order in the above-captioned docket.¹ In its petition, MCI argued that the Commission was incorrect in its determination that it could not make "add-back" retroactive to the beginning of price caps. As discussed below, the arguments made by the local exchange carriers (LECs) in their oppositions are incorrect. The Commission should reject these arguments and adopt add-back effective with the first annual access filing in which add-backs would have been implemented, i.e., 1993.

¹ In the Matter of Price Cap Regulation of Local Exchange Carriers; Rate of Return Sharing and Lower Formula Adjustment, CC Docket No. 93-179, Report and Order, FCC 95-133, released April 14, 1995 (Add-Back Order).

II. APPLICATION OF ADD-BACK TO THE BEGINNING OF PRICE CAPS WOULD NOT BE RETROACTIVE RATEMAKING

Several of the commenters argue that application of the add-back rule would be impermissible retroactive ratemaking.² These commenters miss the point of MCI's petition. MCI was not arguing that the Commission should apply its new rule to the previous periods. It was arguing, instead, that no rule change was necessary to require add-back, and thus that the Commission could and should require add-back effective with the 1993 annual filing.

Add-back of refunds in computing rates of return was first mandated by the Commission in 1986.³ In the Rate of Return Procedures Order, the Commission adopted its previously proposed requirement for the add-back of refunds effectuated through revenue requirement reductions.⁴ Thus, the Commission had already ruled on this issue in CC Docket No. 86-127; there was no need for the Commission to revisit this issue in order to adopt add-back. The Commission can and should require that add-back be applied in every annual access filing since 1993.

III. ADD-BACK DID NOT APPLY ONLY TO AUTOMATIC REFUNDS

BellSouth asserts that the Commission's add-back requirement under rate

² See Pacific at 1; GTE at 2; Bell Atlantic at 1-2; BellSouth at 4.

³ Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements 1 FCC Rcd 952, 956-7 (1986) (Rate of Return Procedures Order).

⁴ Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements (CC Docket No. 86-127) FCC No. 86-157, released April 16, 1986, 104 FCC 2d 273 at 278 (para. 14).

of return regulation applied only to refunds under the Commission's automatic refund rule. This rule was reversed, BellSouth states, in AT&T v. FCC, 836 F.2d 1386 (D.C. Cir. 1988). However, BellSouth is incorrect that the add-back requirement applied only to automatic refunds. The Commission's language discussing add-back refers to all refunds effectuated by reductions in the revenue requirement.

The sharing and lower formula adjustments are exactly this kind of adjustment. Changes in the revenue requirement under rate of return regulation resulted in changes to going-forward rates. Similarly, sharing and lower formula adjustments result in changes to Price Cap Indexes, and thus rates, on a going-forward basis. Thus both refunds under rate of return regulation and sharing/lower formula adjustments under price cap regulation affect going-forward rates. They also both adjust rates based on the LECs' rate of return in a prior period. These two methods of adjusting going-forward rates are exactly the same, and should be accorded the same regulatory treatment.

IV. NEITHER FORM 492A NOR THE COMMISSION'S DECISION IN THIS RULEMAKING PREVENT ADOPTION OF ADD-BACK FOR PRIOR YEARS

In further support of its contention that add-back was not required under price cap regulation, BellSouth makes two arguments: (1) the Form 492A adopted by the Commission for reporting did not require an add-back computation; and (2) the Commission's decision in this docket to expressly adopt a rule which requires add-back is proof that the Commission's existing

rules did not require it.⁵ MCI disagrees with both these assertions.

The Form 492A as initially adopted by the Commission has a line on which the LECs were to report their sharing and lower formula adjustment amounts. Nothing on the Form 492A states what rate of return must be used to compute the sharing/low end adjustment amount. For BellSouth to argue that Form 492A tells anything about the add-back requirement is incorrect.

From the 1993 annual access filing, the first in which add-back was an issue, MCI has maintained that the Commission's rules, as they then existed, required add-back of sharing/low end adjustment amounts. The Commission initiated an investigation of that issue, and has not yet ruled in that investigation. Thus, the Commission has never reached the issue of whether its adoption of price caps somehow altered the instructions for computing the rate of return embodied in the Form 492, despite the complete absence of any instructions in the price cap decision that would change how the rate of return was computed.

BellSouth's claim that the Commission's adoption of an explicit rule requiring add-back supports the notion that the previous rules did not require add-back is also incorrect. The Commission, out of an abundance of caution, has now adopted a rule explicitly requiring add-back of sharing/lower formula adjustment amounts. However, that decision says nothing about the requirement for add-back under the existing rules, as the Commission itself

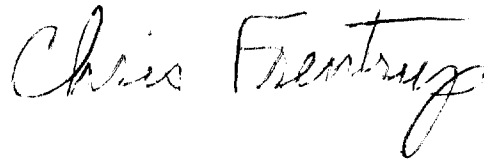
⁵ BellSouth at 2-3.

noted.⁶

V. CONCLUSION

The Commission correctly found that add-back adjustments are an integral part of the Commission's price cap plan. However, the Commission erred when it declined to make the application of this decision retroactive to the beginning of price caps. For the reasons stated herein, MCI urges the Commission to reject the arguments of the LECs and to apply its add-back requirement retroactive to the beginning of price cap regulation.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in cursive script that reads "Chris Frentrup".

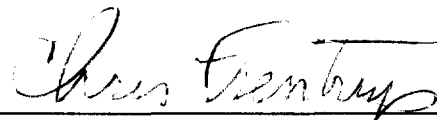
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July 6, 1995

⁶ Add-back Order at 3, n. 3.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on July 6, 1995.

A handwritten signature in cursive script, reading "Chris Frentrup", written in black ink.

Chris Frentrup
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CERTIFICATE OF SERVICE

I, Stan Miller, do hereby certify that copies of the foregoing MCI Opposition were sent via first class mail, postage paid, to the following on this 6th day of July, 1995.

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